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7 IN THE UNITED STATE DISTRICT COURT

8 NORTHERN DISTRICT OF CALIFORNIA

9 SAN FRANCISCO-BRANCH

10

11 EDWARD E. ANDERSON,) Case No. 07-459441WGY
12 Plaintiff)
13 Vs) Date June 5, 2008
14 AMR The parent of AMERICAN AIRLINES) Time: 8:00 A.M.
15 INC. AMERICAN AIRLINES and Does 1) Ctrm: 9
16 through 5, inclusive.) Judge: Hon. William Alsup
17 Defendants)

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19 1. The affidavit of Frederick Roesti cites the survey completed by
20 Plaintiff in this matter. The Defendants assert that this is hearsay
21 evidence hence it should not be consider in Plaintiff's opposition to
22 Defendants Summary Judgment motion.

23 2. It has always been clear that evidence used to impeach the evidence
24 submitted by the opposition is an exception to the hearsay rule. Defendants
25 submitted evidence that they claim shows Plaintiff is not entitled to the
relief sought, but the surveys submitted impeach that evidence.

1 3. The surveys were completed by other skycaps who worked along side of
2 Edward Anderson; they have personal knowledge of the treatment and
3 circumstances of the skycaps who work for Defendant. These skycaps worked
4 for a company that contracted directly with Defendant to perform the same
5 services as Plaintiff performed for American Airlines.

6 4. Federal Rules of Civil Procedure 56 cited by Defendant requires the
7 affidavit should contain competent evidence. Federal Rules of evidence 801
8 (d) (2) (D) states in part, " a statement by the party's agent or servant
9 concerning a matter within the scope of the agency or employment, made during
10 the existence of the relationship.." is not excluded by the hearsay rule.
11 The survey provides information from current skycaps working at the San
12 Francisco airport for an agent of Defendant. In *Hilao v. Estate of Ferdinand*
13 *Marcos* (1996) 103 F3d 767 775, and *United States v. Chang* (2000) 207 F3d 1169,
14 1176-1177 the courts cited the section of the federal rules to confirm that
15 such a statement would not be excluded as a result of the Hearsay rules.

16 5. The Federal Rules of Evidence rule 807 provides an additional exception
17 to the hearsay rule, ie the trustworthy exception,

18 " A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness,
19 is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the
20 statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through
21 reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the
22 statement into evidence..."

23 As skycap statements demonstrate they provide circumstantial guarantees of
24 trustworthiness.

25 6. The cases cited by Defendants in order to preclude the affidavit of
26 Frederick C. Roesti in their attempt to prevail in the Summary Judgment
27 Motion in this matter, ignores the exceptions to the hearsay rule.

For the reason cited above the Defendants opposition to the evidence submitted in this matter should be ignored.

Respectfully submitted,

s/Frederick C. Roesti
Frederick C. Roesti
Attorney for Plaintiff

PROOF OF SERVICE-CCP 1013A-2015.5

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO:

I am employed in the County of San Francisco, State of California; I am over the age of 18 years and not a party to the within action: my business address is 1095 Market Street #419 San Francisco, CA.

On June 3, 2008, I served the following documents(s) on the party(ies) entitled to notice in this action, described as:

OPPOSITION TO DEFENDANTS OBJECTION TO THE EVIDENCE
SUBMITTED IN OPPOSITION TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT
 via Fax, the true copies thereof enclosed in a sealed
envelope(s) for delivery as follows:

_____ VIA **U.S.MAIL**, the true copies thereof enclosed in a sealed envelope(s) for delivery as follows:

KENNETH R. O'BRIEN Esq.
LITTLER MENDELSON
2520 VENTURE OAKS WAY #390
Sacramento, CA 95833

I declare under penalty of perjury under the laws of the State of California, that the above is true and correct.

Executed on June 3, 2008 at San Francisco, California.

/s _____
Clifford D. Bercovich